APPENDIX.

RULE 52—FINDINGS BY THE COURT.

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b). As amended Dec. 27, 1946, effective March 19, 1948.

RULE 53—MASTERS.

(e) REPORT.

(1) Contents and Filing—The master shall prepare a report upon the matters submitted to him by the order

of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(II) In Non-Jury Actions—In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

RULE 71A—CONDEMNATION OF PROPERTY.

(h) TRIAL. If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a

trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19344

UNITED STATES OF AMERICA,
Appellant,

versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY AND QUITMAN COUNTIES, STATE OF GEORGIA, AND FRANK HUMBER, ET AL., AND UNKNOWN OWNERS,
Appellees,

AND

No. 19345

UNITED STATES OF AMERICA,
Appellant,

versus

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY COUNTY, STATE OF GEORGIA, AND CAROLYN GAVIN GIBSON, ET AL., AND UNKNOWN OTHERS,
Appellees.

Appeals from the United States District Court for the Middle District of Georgia.

(December 5, 1962)

Before TUTTLE, Chief Judge, WISDOM, Circuit Judge, and JOHNSON, District Judge.

TUTTLE, Chief Judge: These appeals by the United States from District Court judgments approving valuation awards of condemnation commissioners present the question whether the reports of the commissioners were sufficiently detailed as to findings of fact, and in giving the basis on which they were bottomed to permit adequate review by the district court, and thereafter by this Court.

These condemnation suits are a part of a program of land acquisition for the Walter F. George Lock and Dam project on the Chattahoochee River in Georgia and Alabama. The three series of tracts involved are all tracts of ordinary farm, timber and pasture land. While the government requested a jury trial, it does not now contend that the submission of the issues to commissioners by the trial court constituted reversible error. Neither does the government, on the record before us, assign any specific error in the hearings before the commissioners as a basis for attacking the judgment of the district court in affirming the report of the commissioners. Instead, the government takes the position that the reports of the commissioners are in such general and vague terms as to make it impossible for the district court or for this Court on appeal to determine whether the commissioners' ultimate conclusions of value were based on legally correct principles or on legally sufficient evidence.

The appellees here, first, claim that the Court of Appeals cannot take notice of the government's appeal, because it does not expressly contend that the awards are excessive. They take the position, therefore, that any claim by the government that there was error in the form or substance of the commissioners' reports falls within the "harmless error" rule of the Federal Rules of Civil Procedure, Rule 61 F.R.C.P. We think this contention is without merit. It is apparent from the findings of the commissioners that the awards made by them and approved by the trial court are substantially in excess of the amounts deposited in court upon the declaration of taking. It thus appears that if errors occurred in the proceedings below, as a result of which judgments were awarded in excess of the amounts contended for by the United States, such errors would not be harmless in the sense of the Rule.

In general, the report of the commissioners recited the substance of the valuation testimony given by the several witnesses tendered by the landowners, on the one hand, and by the government on the other, and they made ultimate findings of the market value of the property taken and of severance damages to lands not taken and make certain specific findings as to the value of easements and fences taken, or the cost of fencing the remaining tracts. The reports did not in any manner whatever indicate which evidence the commission credited and which evidence it discredited. The reports gave no indication as to the degree to which it based its findings upon those opinions that were based

on knowledge of comparable sales, nor did they give any indication as to whether indicated sales were truly comparable. The reports did not indicate to what extent it gave credence to the opinions of witnesses who, according to the summary of evidence given in the reports themselves, had little or no familiarity with the ordinary ingredients that are generally considered by the courts to be required to support an opinion of value in a condemnation case.

Part of the basis for this Court's repeatedly stating that the trial of condemnation valuation issues is typically for a jury, and the appointment of commissioners is proper only in the exceptional case, *United States v. Buhler*, 5 Cir., 254 F. 2d 876, *United States v. Leavell & Ponder, Inc.*, 286 F. 2d 398, 408, *United States v. Buhler*, 5 Cir., 305 F. 2d 319, 331, is that where a trial is had before a jury, the trial judge is charged with the responsibility of determining the qualifications of so-called expert witnesses and of others who undertake to express opinions as to land values and to determine intially whether so-called "comparable sales", about which witnesses propose to testify, are sufficiently comparable to justify their consideration by the fact-finder, and because, further, the trial judge is able, by correctly charging the jury, to point out the defects and weaknesses in the testimony of interested parties to the proceedings, such as the owners of the land involved, and to stress the importance, as courts have always done, *Baetjer v. United States*, 1 Cir., 143 F. 2d 391, 397; *International Paper Co. v. United States*, 5 Cir., 227

F. 2d 201, 208; *United States v. Leavell & Ponder, Inc.*, 5 Cir., 286 F. 2d 398, 407, cert. denied 366 U. S. 944, of opinion evidence based on comparable transactions. In a trial to a jury under such supervision by a trial judge, it can well be understood why a general verdict of value, plus a general verdict of severance damages can suffice, whereas a hearing before a commission must result in findings much more detailed than a general verdict.

The Courts of Appeals of the several circuits are not of a uniform mind as to this, but we find ourselves fully in accord with the reasoning of the Court of Appeals for the Fourth Circuit in *United States v. Cunningham*, 4 Cir., 246 F. 2d 330, 333, where it is said:

> "The very reasons which justify the appointment of the commission, however, demonstrates the inadequacy of the commission's report. The justification of the appointment is the variety and complexity of the matters to be considered on the question of valuation and the importance of having these adequately set forth in a report so that they may be subjected to the scrutiny of the District Court and of this court upon review and the proper principles of valuation applied to them. Any adequate review of the facts or of the legal principles followed in basing valuations on the facts is defeated if a report by the commission is of such a character that it amounts to no more than a general verdict by a jury. The verdict of a jury of twelve men may reasonably be dispensed with if commissioners make a report which furnishes an

> adequate basis of review by the trial judge and the appellate court, but not if the report furnishes no such basis. Just as a judge in a trial without a jury is required to make adequate findings so that his conclusions may be reviewed by the appellate court so a master, in an action to be tried without a jury, is required to make findings of fact so that his conclusions may be adequately reviewed by the trial judge, who is required to accept them 'unless clearly erroneous' (Rule 53(e) (2)), and this practice with respect to the report of a master is prescribed by Rule 71A(h) with respect to reports of commissioners in condemnation proceedings."

This Court has expressly approved this language of the Fourth Circuit in *United States v. 2,477.79 Acres of Land in Bell County*, 5 Cir., 259 F. 2d 23, where on page 29, we said:

> "We find ourselves in agreement with the Government's position that the findings of the commissioners are wholly inadequate and that the judgment must be vacated and the cause remanded for proper findings and a judgment based thereon. From the report, so styled, of the commissioners nothing appears except a recital of their appointment, a statement that a hearing was had, and the commissioners' conclusions as to values. As examples of the deficiencies in the findings it may be noted that *nothing is found as to how the commissioners resolved the conflicts in the testimony*, no findings appear as to the uses of the land particularly Tract 805, and no determination is made

> as to benefits. Without explicit findings the trial court cannot adopt or reject the findings or adopt some and reject others. Without adequate findings this Court does not have before it a record which permits of a review of the district court's adjudication. United States v. Buhler, supra; United States v. Cunningham, 4 Cir., 1957, 246 F. 2d 330." [Emphasis added.]

We recognize that the view we take of this matter is at variance with that of the Court of Appeals for the Tenth Circuit as expressed in the decision of that Court in *United States v. Merz*, 10 Cir., 306 F. 2d 39. Our view in this respect is in accord with that of the Court of Appeals for the Ninth Circuit, which has recently reversed judgment of a trial court in California which expressly stated that in a condemnation case, the Commission's finding "may be as general as the verdict of a jury, and have the same effect". In its judgment reversing this decision the Court of Appeals in *United States v. Lewis*, 9 Cir., No. 17,437, dec. July 10, ... F. 2d ...., said:

> "Upon this basic difference we agree with the principles expressed in Cunningham. The district judge is not sitting as the presiding judge in a jury-tried case but as a reviewing court. He has not heard the evidence nor supervised its admission and thus is in no position to view the commission's report simply as a jury verdict. If the court is intelligently to perform a function of review, it must be able to ascertain whether, in arriving at its value judgment, error was committed by the commission, either in the

resolution of factual disputes or in the application of principles of valuation. There must be a sufficient disclosure to the reviewing court to enable it to understand what it is that has been decided. As stated by Mr. Justice Cardozo in United States v. Chicago M. St. P. & P. Railroad, 1935, 294 U. S. 499, 510-511:

"We must know what a decision means before the duty becomes ours to say whether it is right or wrong."

Although admittedly the scope of review, either by the trial court of the commissioners' findings of valuation or by this Court on the trial court's judgment, is restricted in the sense that a reversal is to be had only if the order under review is clearly erroneous, this function cannot be adequately performed by the reviewing court unless the fact finder makes it plain what the basis of its decision was. We do not say that every contested issue raised on the record before the commission must be resolved by a separate finding of fact. We do say, however, that there must be sufficient findings of subsidiary facts so that it will appear to the reviewing court that the ultimate finding of value was soundly and legally based. It is too obvious to require argument that in determining market value the best test is what the same or similar property is selling for in the locality at or near the day of taking. Thus, it is universally recognized that the best test of market value is the data concerning comparable sales. On the record before us, the commission speaks of comparable sales, but there is no finding or expression of opinion

as to whether the sales sustain a value of $100 per acre, for instance, in the case of one of the tracts, as found by the commission, or whether this value represents merely a scaling down by the commission of an expression of an opinion by others whose opinion of value may have been based on some such theory as that expressed by one of the witnesses, who said:

> "I arrived at it like I'd price mine, just like it is; that's what it would take to buy mine adjoining Hoke's."

If this is all that the record shows as to this neighbor's qualifications to express an opinion of value of the land, then such opinion would obviously have no probative value.

This Court has held that in an appeal from a judgment of the trial court where the valuation finding has been made by commissioners, it is the function of the trial court to determine whether the commission's findings are to be approved or are to be reversed under the clearly erroneous standard. *United States v. Twin City Power Company of Georgia*, 5 Cir., 253 F. 2d 197, 204. It is then the function of this Court to determine whether the district court's disposition of the commission's findings was clearly erroneous.

In order that the district court may perform its function, it must be able to determine whether the commission adopted the correct legal principles, and whether the evidence before the commission met the standard of substantiality to withstand a reversal by the district

court. As we said in *United States v. Leavell & Ponder, Inc.*, 5 Cir., 286 F. 2d 398, at page 406, "The figure arrived at by the commissioners would much better have been supported by subsidiary findings of fact. . . . Without adequate subsidiary findings it is impossible for this Court to test the correctness of the elements of which it is the product or the sum."

Furthermore, while we do not even suggest the need for long findings or long reports merely for the sake of length, there is much to be said for the view that commissioners like trial judges may be expected to give more careful consideration to the subsidiary facts and the legal principles involved if they are required to be stated in the report. The language of the opinion of the Court of Appeals for the Second Circuit, in *United States v. Forness*, 2 Cir., 125 F. 2d 928, at page 942 is here apposite:

> "It is sometimes said that the requirement that the trial judge file findings of fact is for the convenience of the upper courts. While it does serve that end, it has a far more important purpose—that of evoking care on the part of the trial judge in ascertaining the facts. For, as every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness in the discharge of that duty: Often a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper."

In order that the commissioners' reports may meet the standards here prescribed, the judgments are REVERSED and the cases are REMANDED to the trial court for resubmission.

A true copy.

Test: EDWARD W. WADSWORTH,
Clerk, U. S. Court of Appeals,
Fifth Circuit,
By CLARA R. JAMES,
(Seal) Deputy.

Jan. 16, 1963.

New Orleans, Louisiana

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,344

D. C. Docket No. 789 Civil

UNITED STATES OF AMERICA,
Appellant,

versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY AND QUITMAN COUNTIES, STATE OF GEORGIA, AND FRANK HUMBER, ET AL., AND UNKNOWN OWNERS,
Appellees.

Appeals from the United States District Court for the Middle District of Georgia.

Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and Johnson, District Judge.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for resubmission in order that the commissioners' reports may meet the standards prescribed in the opinion of this Court.

Issued: December 5, 1962.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,345

D. C. Docket No. 792 Civil

UNITED STATES OF AMERICA,
Appellant,

versus

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY COUNTY, STATE OF GEORGIA, AND CAROLYN GAVIN GIBSON, ET AL., AND UNKNOWN OTHERS,
Appellees.

Appeal from the United States District Court for the Middle District of Georgia.

Before Tuttle, Chief Judge, Wisdom, Circuit Judge, and Johnson, District Judge.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the

same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for resubmission in order that the commissioners' reports may meet the standards prescribed in the opinion of this Court.

Issued: December 5, 1962.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT.

Nos. 19,344 and 19,345.

UNITED STATES OF AMERICA,
Appellant,

versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY AND QUITMAN COUNTIES, STATE OF GEORGIA, AND FRANK HUMBER, ET AL.,
Appellees,

and

UNITED STATES OF AMERICA,
Appellant,

versus

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY COUNTY, STATE OF GEORGIA, AND CAROLYN GAVIN GIBSON, ET AL.,
Appellees.

PETITION FOR REHEARING.

Appellees in the captioned causes respectfully petition this Honorable Court for a rehearing of the Appeal in said cases, and respectfully suggest:

That the opinion rendered in said causes on December 5, 1962, is contrary to law, this Court having erred in the following respects:

1. In holding that a condemnation commission, under the Federal Rules of Civil Procedure, in the findings of fact of its award, must indicate, which evidence the commission credited, and which discredited.

2. In holding that such a commission in its report, must indicate the degree to which it based its findings upon those opinions that were based on knowledge of comparable sales.

3. In holding that such a commission in its report, must indicate in its findings of fact whether indicated sales were truly comparable.

4. In holding that such a commission in its report, must indicate to what extent it gave credence to the opinions of witnesses, who, according to the Court's statement, had little or no familiarity with ordinary ingredients generally considered by the Courts to be required to support an opinion of value, although no objections were made to the witnesses' qualifications to express an opinion of value; and the reports do not show or purport to show the witnesses' qualifications.

5. In holding that such a commission in its report must make sufficient findings of subsidiary facts (without specifying what subsidiary facts were involved as to require a specific finding) so that it will appear to the reviewing Court that its ultimate finding of value was soundly and legally based, in condemnation cases involving a single highest and best use, where such

use was specifically found, both before and after the taking, and which cases were the "most simple" of condemnation cases involving no exceptional features, or collateral questions which could have materially affected the ultimate finding of value.

6. In holding that such a commission in its report where evidence of comparable sales was introduced, is required to find whether the comparable sales sustain its ultimate finding of value, for example, of $100.00 per acre, or whether the value represents a scaling down of an opinion which may have been based upon an incorrect theory of market value; in other words, in holding that a commission in such a case must make a specific finding that it did not violate the instructions given it by the Trial Court, that it knew the meaning of market value which had been defined by said instructions; and that it recognized incorrect theory as incorrect; in holding that there must be a specific finding in such respects to enable the district court to determine whether the commission adopted the correct legal principles, that is, whether it followed the instructions given it by the district court; and in failing to recognize and apply the principles of law that (a) adequate findings of fact do not require the assertion of the negative of each rejected proposition; (b) that if any inference can be legitimately drawn from facts found to support the judgment, they will be so drawn; and (c) the presumption is that the commission followed the instructions of the Trial Court and the law; further, in overlooking conclusion of law No. 2 in the *Lindsey*

case, (R. 40), conclusion of law No. 2 in the *Watson* case, (R. 48), and conclusion of law No. 2 in the *Gibson* case, (R. 98), as found in the reports of the commission which recognized that just compensation must represent the fair market value of all of the property taken as of the date of taking.

7. In failing to recognize and apply this Court's decision in *U. S. vs. Tampa Bay Garden Apartments, Inc.*, 294 F 2d 598, 606, wherein it was held that it is not necessary, in testing the district court's judgment by the clearly erroneous doctrine, to require a specific finding with respect to each of the evidentiary conflicts in the record.

8. In failing to recognize and apply the principles of law that findings of fact are required on only the essential factual issues, and a master under Rule 53 (e) (2) is not required to make findings that will present every possible view of the case, nor is a master required to make findings on every aspect of the evidence.

9. In failing to recognize the distinction between the instant simple condemnation cases where a single highest and best use of farming was involved, and was so found, and those cases, *U. S. vs. Cunningham*, 246 F 2d 330, 4th Circuit, 1957, *U. S. vs. Bell County*, 259 F 2d 23, 5th Circuit, 1958, *U. S. vs. Buhler*, 254 F 2d 876, 5th Circuit, 1958, *U. S. vs. Leavell and Ponder, Inc.*, 286 F 2d 398, 5th Circuit, 1961, *U. S. vs. Carroll*, 304 F 2d, 300, 4th Circuit, 1962, and *U. S. vs. Lewis*, 308 F 2d 453, 9th

Circuit, 1962, where multiple highest and best uses, consequential benefits, multiple uses and need for peculiar property, namely, an airfield, need for replacing cash reserves for short lived equipment, dual uses, and dual uses, respectively were involved requiring subsidiary findings, and where there was no specific subsidiary finding as to the highest and best use.

10. In failing to recognize and apply the holding of this Court in the case of *Ginsberg vs. Royal Insurance Co.*, (CA 5th, 1950) 179 F 2d 152 (2) (3), which was applicable and controlling and required a contrary decision to that rendered by the Court.

11. In failing to recognize and apply the ruling of the 9th Circuit, Court of Appeals, in the *U. S. vs. Benning* and *U. S. vs. Morrison* cases decided July 10, 1962, 308 F 2d 453 (7), at page 460, which rejected specifically the identical contentions made by Appellant in the instant cases but which were adopted by this Court, and which held that commission's findings and report were sufficient though not disclosing what proof the commission relied on and why it chose to believe certain witnesses and accept certain evidence as more credible than other witnesses and other evidence; and in misapplying the case of *U. S. vs. Lewis, supra,* as authority to support its decision which Appellees respectfully submit is distinguishable; and further on page 7 of this Court's opinion, in citing language from the *Lewis* decision, *supra,* which was in response to the Trial Court's decision in that case that no findings of

fact are required by a condemnation commission, and not in response or related to the contention that such a commission must point to the very evidence on which it based its award.

12. In failing to recognize and apply the rule that findings need be only as detailed as the nature of the subject of the case demands to afford a basis for decision and to enable this Court to apply the clearly-erroneous rule, under which rule the findings are sufficient, in the light of the simplicity of the factual issues involved.

13. In holding that the Appellant objections to the awards in the instant cases were themselves adequate to present a question for review when said objections fail to specify any particular inadequacy in said findings and said objections were altogether too indefinite to raise a question for review, and in overlooking the holding of the 9th Circuit Court of Appeals in *U. S. vs. Lewis*, (9th Circuit, 1962) 308 F 2d 453 (2) and at page 456, holding that objections to an award must point to a specific inadequacy of the findings in order to present a question for review.

14. In failing to recognize and apply the decision of *U. S. vs. Merz*, (10th Circuit, 1962) 306 F 2d 39 (3) (4), at pages 42-43, which is directly in point, and which authority is bottomed on the controlling cases of *Kelly v. Everglades Drainage District*, 319 U. S. 415, 63 S. Ct. 1141, 87 L. Ed. 1485, *Shapiro vs. Reubens*, (7th Circuit)

166 F 2d 659, 665, *U. S. vs. Pendergrast,* (4th Circuit, 241 F 2d 687, and *Cunningham vs. U. S.,* (4th Circuit) 270 F 2d 545, which require a contrary decision from that rendered by the Court.

15. Assuming that the decision of this Honorable Court were otherwise legally sound, the decision fails to particularize the specific inadequacies in the report in order that the commission might comply therewith. The Court's order reverses the judgments for resubmission to the commission in order that the reports might meet the "standards herein prescribed" but no specific standards are prescribed and no specific inadequacies or lack of findings of required specific subsidiary facts are set forth in the opinion which would enable a commission to comply therewith, as was done in the case of *U. S. vs. Lewis,* (9th Circuit, 1962) 308 F 2d 453, at pages 458-459.

For the foregoing reasons, Appellees respectfully request that a rehearing should be granted, and that this Honorable Court should revise its decision and affirm the judgment of the United States District Court for the Middle District of Georgia.

Respectfully Submitted,

W. LOWREY STONE,
Blakely, Georgia,

JESSE G. BOWLES,
Cuthbert, Georgia,

FORREST L. CHAMPION, JR.,
Post Office Box 1975,
Columbus, Georgia,
Counsel for Appellees.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

CERTIFICATE OF SERVICE.

I hereby certify that I have this 17th day of December, 1962, mailed a copy of the foregoing Petition for Rehearing in Cases Numbered 19,344 and 19,345, of the United States Court of Appeals for the Fifth Circuit to Counsel of record for Appellant.

FORREST L. CHAMPION, JR.,
Of Counsel for Appellees.

[74 and 75]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19,344

UNITED STATES OF AMERICA,
Appellant,

versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY AND QUITMAN COUNTIES, STATE OF GEORGIA, AND FRANK HUMBER, ET AL., AND UNKNOWN OWNERS,
Appellees,

AND

No. 19,345

UNITED STATES OF AMERICA,
Appellant,

versus

1,361.09 ACRES OF LAND, MORE OR LESS, SITUATE IN CLAY COUNTY, STATE OF GEORGIA, AND CAROLYN GAVIN GIBSON, ET AL., AND UNKNOWN OTHERS,
Appellees.

Appeals from the United States District Court for the Middle District of Georgia.

(January 3, 1963)

ON PETITION FOR REHEARING.

Before TUTTLE, Chief Judge, WISDOM, Circuit Judge, and JOHNSON, District Judge.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above stated and numbered cases be, and the same is, hereby DENIED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19344

UNITED STATES OF AMERICA,
Appellant,

versus

2,872.88 ACRES OF LAND, MORE OR LESS, SITUATED IN CLAY AND QUITMAN COUNTIES, STATE OF GEORGIA, AND FRANK HUMBER, ET AL., AND UNKNOWN OWNERS,
Appellees.

ON CONSIDERATION OF THE APPLICATION of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this court in said cause be and the same is stayed for a period of sixty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within sixty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of sixty days from the date of this order, unless the abovementioned certificate shall be filed with the clerk of this court within that time.

DONE AT NEW ORLEANS, LA., this 15th day of January, 1963.

(S.) ELBERT P. TUTTLE,
United States Circuit Judge.

(Original Filed January 15, 1963.)